

PCA Case No. 2013-15

**IN THE MATTER OF AN ARBITRATION UNDER THE AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA FOR THE
PROMOTION AND PROTECTION OF INVESTMENTS, DATED MAY 24, 1988**

- and -

THE UNCITRAL ARBITRATION RULES (AS REVISED IN 2010)

- between -

SOUTH AMERICAN SILVER LIMITED (BERMUDA)

(the “Claimant”)

- and -

THE PLURINATIONAL STATE OF BOLIVIA

(the “Respondent”, and together with the Claimant, the “Parties”)

PROCEDURAL ORDER NO. 12

Tribunal

Dr. Eduardo Zuleta Jaramillo (Presiding Arbitrator)
Prof. Francisco Orrego Vicuña
Mr. Osvaldo César Guglielmino

March 8, 2016

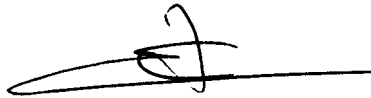
1. By letter dated February 25, 2016 (the “**Request**”), the Plurinational State of Bolivia (“**Bolivia**” or “**Respondent**”) requested the Tribunal to order South American Silver Limited (“**SAS**” or “**Claimant**”) to produce documents that the Respondent had requested by its letter of February 10, 2016. In addition, in the Request, Bolivia asked the Tribunal to order SAS to make certain affirmations relating to a specific category of documents, reserved its right to request negative inferences corresponding to another group of categories of documents, and requested that the non-cooperative attitude of the Claimant be taken into consideration when awarding costs.
2. On February 29, 2016, SAS commented on the Request, noting that it was submitted two and a half months after SAS filed its Reply Memorial and 7 months after the conclusion of the document production phase. SAS indicated that, in the spirit of cooperation, it had provided additional documents, which in its opinion could be relevant in this arbitration, and also provided final comments on the categories of documents requested by Bolivia. In sum, SAS requested the Tribunal to reject the Request and take it into consideration when awarding costs.
3. By letter dated March 2, 2016, the Tribunal requested the Parties to provide a copy of the Respondent’s letter dated February 10, 2016, addressed to the Claimant, which was provided by Bolivia on the same day.
4. The Tribunal notes that Procedural Order No. 1 provided that “[e]ach Party may request the production of documents from the other Party in accordance with the procedural calendar above” (Section 5.1 of Procedural Order No. 1). In fact, the procedural calendar set forth in Section 4 of Procedural Order No. 1 established that the Document Production phase shall take place after the submission of the Statement of Claim and the Respondent’s Statement of Defence, and before the submission of the Claimant’s Reply. In conformity with that procedural calendar, this was the only procedural opportunity set forth for each Party to request to the other Party the production of documents in its control.
5. In addition, Procedural Order No. 1 provided that the Tribunal had the authority to request the production of documents on its own motion, pursuant to the 2010 UNCITRAL Arbitration Rules (Section 5.4 of Procedural Order No. 1 and Article 27.3 of the UNCITRAL Rules).
6. The Request comprises ten new categories of documents that were not requested within the document production phase contemplated in Procedural Order No. 1. Therefore, it is a new request, which was not ordered by the Tribunal on its own motion. Hence, the Tribunal considers that the provisions related to Document Production of Section 5 of Procedural Order No. 1 are not applicable to the Request.
7. Notwithstanding the foregoing, the Tribunal notes that SAS granted the Request concerning some categories of documents while affirming that it was not obligated to do so.
8. Based on the foregoing, the Tribunal will next decide the Respondent’s requests.
9. Concerning Category 1 of the Redfern Schedule prepared by Bolivia, the Tribunal notes that the reference to the costs relating to the Technical Information, as now presented by Bolivia, is not a new issue or one that has emerged from the Reply. For example, the First Brattle Report of March 30, 2015, makes express reference to such information having a value.¹ Therefore, they

¹ “Although Claimant’s mining concessions were reversed, SASC is in possession of confidential metallurgical test results and geological information. A buyer of the concessions would have to either purchase this information from SASC or repeat the drilling campaign and metallurgical tests to continue the development of

are documents that could have been requested by the Respondent during the document production phase that was carried out pursuant to Procedural Order No. 1. In fact, at that time, Bolivia requested documents demonstrating the Project costs (Category No. 24). The Tribunal ordered SAS to produce the documents under that category, with the exception of those that were of public domain, resulting in all documents relating to the Project costs, including those under Category No. 24, having had to be produced by SAS at that time.

10. Consequently, at this time, the Tribunal does not find reasons to order the production of the documents requested by Bolivia, and therefore, rejects the Request relating to the documents classified by Bolivia as Category 1.
11. With respect to the documents classified by Bolivia as Category 2, the Tribunal finds that SAS, in its letter of February 29, 2016, has clarified the terms “among others” and has confirmed that it does not have additional documents responsive to the Request. Therefore, no Tribunal decision is necessary.
12. Concerning the documents classified by Bolivia as Category 8, the Tribunal notes that in its letter of February 29, 2016, SAS confirmed having made the necessary consultations with RPA and having confirmed that RPA does not have documents that respond to Bolivia’s request. Therefore, no Tribunal decision is necessary.

Place of the Arbitration: The Hague, the Netherlands



Dr. Eduardo Zuleta Jaramillo
(Presiding Arbitrator)

On behalf of the Tribunal

the project. Therefore, this information may have market value that should be deducted from any damages amount awarded to Claimant. We discuss the value of the confidential data in Section VIII.D.” Brattle, ¶28.